



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 27, 1992

Ms. Genevieve G. Stubbs
First Assistant General Counsel
Texas A&M University System
Office of General Counsel
300 System Administration Building
College Station, Texas 77843-1116

OR92-38

Dear Ms. Stubbs:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14108.

You have received a request for information relating to the activities of certain faculty members of the Texas A&M University System (the "system"). Specifically, the requestor seeks nine categories of information relating to the research activities of these faculty members, especially where the "AFEX Process" is concerned or addressed. You claim that the requested information is excepted from required public disclosure by sections 3(a)(1), 3(a)(3), and 3(a)(11) of the Open Records Act.

You claim that litigation is reasonably anticipated and that the requested information is related to the anticipated litigation. Section 3(a)(3) excepts:

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various

political subdivisions has determined should be withheld from public inspection.

Open Records Decision No. 551 (1990) held that section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Section 3(a)(3) requires parties to a lawsuit to seek relevant information through the normal process of discovery. *Id.*

You have submitted to us for review correspondence from the requestor, who is an attorney representing AFEX Corporation. AFEX Corporation claims that the system has violated its trade secrets and property rights. The President of AFEX has told you that "your organization is supporting this activity and will be held liable for damages." Correspondence from AFEX's attorney to Texas A&M University faculty members makes several clear demands and threatens litigation in the event of non-compliance. The correspondence supports your claim that litigation is reasonably anticipated. You have determined that the requested information relates to the anticipated litigation. It therefore may be withheld from required public disclosure pursuant to section 3(a)(3) of the Open Records Act. Please note that this ruling applies only for the duration of the litigation at issue and only for information which is not disclosed by the discovery process or by court order. Because we resolve your request under section 3(a)(3), we need not address the applicability of sections 3(a)(1) and 3(a)(11) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-38.

Yours very truly,

A handwritten signature in black ink, appearing to read "Steve Aragon". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Steve Aragon
Assistant Attorney General
Opinion Committee

SA/GK/lcd

Ref.: ID# 14108
ID# 14318

cc: Mr. David H. Donaldson, Jr.
Graves, Dougherty, Hearon & Moody
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